Dear FCC,
State of the USA 900 Service
Today the USA 900 service is almost non-existent. Only a limited number of national and regional carriers still offer 900 service. Almost none of the comments presented in previous years apply now.

In my opinion, one of the reasons for the demise of the 900 service was total focus on consumer protection and no focus on protection of the businesses that offered information via 900 service.

The preeminent example of this bias was carried out by the customer service organizations within the LEC's. When a consumer called a LEC to inquire about a 900 call, the Customer service representatives CSR's) were trained to immediately adjust the call rather than investigate the situation. When a customer claimed that no 900 call had been made from their telephone line, each CSR had the immediate capability to determine if a call to the designated 900 number had been made from that consumer's telephone. Instead the CSR's simply adjusted away the 900 charges rather than check the network statistics to determine that the call had actually occurred. The evidence for these actions could be found in the monthly billing adjustment reports submitted by the LEC's with a large number of adjustments for reasons such as DAK (customer denies all knowledge of call) and calls not made). If in fact, large percentages of "phantom" (non-existent) calls had been submitted to a LEC, the 900 number would have been blocked from billing and the contract with the billing consolidator or carrier cancelled. As the 900 industry saw many LEC adjustments claiming no 900 call had been made, only a limited number of 900 numbers and/or billing agreements were cancelled for billing "phantom" calls. At no time were consumers held to account for legitimate calls made to 900 numbers.

Another example of the bias to consumer protection was the way carriers protected them selves at the expense of other businesses involved in providing 900 services. LEC's who performed billing activities for national carriers, regional carriers and billing consolidators designed their billing contracts so that all LEC costs and profits would be paid regardless of how the LEC's performed on customer management. This can be proven by clauses that permit the LEC's to adjust customer charges directly evenly when the customer bills clearly state another customer service number should be dialed for billing inquiries. LEC's claimed that refusing a customer's request for an adjustment on a 900 call might cause the customer to have negative feelings about the LEC. Also, due to system volume issues which were codified in contracts, the LEC's issued bulk adjustments to AT&T across its consumer, business and 900 service. Without detail from the LEC, AT&T allocated chargebacks to its divisions by formulas known only to its internal financial managers. This could be proven with a review of AT&T 900 chargeback reports to service bureaus which included adjusted charges for calls made to 900 numbers not owned by that service bureau. Also, clauses in carrier contracts with service bureaus required the service bureaus to accept all responsibility for consumer 900 charge backs even if the largest volume of those chargebacks were made by some carrier to maintain its "goodwill" with the consumer. In fact, GAAP (generally accepted accounting practices) rules require that all businesses book "goodwill" adjustments as contra-revenue rather than a cost of doing business as the service was actually provided but a management decision caused the charge to be adjusted. The GAAP rules required that carriers/billing entities

investigate each consumer complaint about 900 charges determining if the call was actually made, if TDDRA rules were followed, and, if documentation had been needed to prove justification that an adjustment was required, that adjustment documentation was obtained. If after investigation, a carrier/billing entity determined that the charges were legitimate and still decided to adjust the call as "goodwill", the carrier was required to accept the loss and still pass the required monies to other parties in the 900 call transaction. A request for such documentation and the subsequent inability to provide it was proof of these activities. 900 service bureaus and their information providers had no control over which 900 calls were adjusted or the reasons those calls were adjusted but in all cases, contracts with carriers or billing entities prevented them from holding their 900 service providers accountable for the adjustment process. By the way, in the EU, contracts made between entities where one has more power and the terms of the contract are favorable to the more powerful entity, the contract is invalid and the least powerful entity can seek redress.

Another reason for the demise of 900 service was the ability of new carriers, LEC and interstate, to decide whether or not they would offer 900 service. Wireless carriers, broadband access carriers and CLEC's ability to enter the USA telecommunications service with no requirement to offer 900 connection has limited the available market for 900 service. The FCC's own forecast show that these carriers are growing at a rapid rate while land line numbers are declining. As broadband access becomes available in more markets and more consumers drop land line service in favor of wireless service, information providers have fewer consumers reachable via 900 service. This can only change if the FCC requires all carriers to offer connections to 900 services. If this is not done, eventually only a small percentage of the consumers in the USA will have potential connection to 900 services.

FCC regulation and lack of regulation has also contributed to the demise of the 900 service industry. Since the first two comment opportunities on 900 service, interstate and international telecommunications have been deregulated by the FCC. With minor exceptions, consumers now contract for interstate and international telecom service via contracts with carriers. A simple review of those carrier consumer agreements will show that the consumer is held liable for all calls made from the telephone number assigned to the consumer and connected to the interstate or international carriers except for 900 calls, collect calls and a small number of other type calls. 900 information providers and 900 service bureaus have no method to legally insure that consumers that use and benefit from their services are required to pay for obtaining the service via 900 numbers. The FCC has not mandated that the act of calling a 900 number is an implied contract to pay for services obtained on such a call. Due to the above mentioned restrictions on access to detailed 900 service adjustments, no information provider or 900 service bureau has been able to sue a consumer for non-payment of 900 service charges and potentially obtain a decision similar to the "filed rate doctrine" whereby the act of calling a 900 number causes an implied contract between the consumer and the 900 information provider. Also, the FCC has made toll free, wireline and wireless calls portable while leaving 900 numbers fixed and owned by carriers not information providers. This prevents information providers from controlling the value of the service they provide via 900 numbers. The ITU adopted the 979 country code and appropriate recommendations to facilitate

International Premium Rate Service (IPRS). The USA delegation to the ITU was one of the sponsors of these recommendations. As of today the FCC has made no provision for such a service in its regulations. This has limited the ability of international information providers to reach USA consumers in a legal manner. As almost all information providers fall into the small business category, it seems that the FCC has failed in its charge to protect the interest of small businesses in regard to 900 service or IPRS.

The out-dated technology required to provision 900 services has also contributed to the demise of 900 service. As noted above, the FCC has not made 900 numbers portable while doing so for toll free, wireline and wireless numbers. This has enabled carriers who own 900 numbers to determine if the numbers can offer service. Carriers who offered 900 service and subsequently decided to cease offering such service were able to take down all of the 900 numbers assigned to it in the 900 number plan. Information providers had no opportunity to find another carrier to take over a 900 number and continue service. The FCC has already determined that current technology makes portability possible on all number ranges and number structures. It is costly (above $1 M) and slow for a new carrier to provision new 900 service. The ILEC's have maintained a requirement where 900 numbers are in separate databases from all other types of numbers. This allows the ILEC's to charge carriers a per switch charge to enable 900 service and to delay implementation of 900 service. In fact, the format of 900 numbers is exactly the same as all others in the North American Dialing Plan (NPA-NXX-XXXX). ILEC's currently forward toll free numbers by having its systems review the entire string of 10 digits to route the call. The same could be done for 900 numbers. Current toll free data bases could be opened up to insert 900 as another NPA in the routing plan. If an ILEC can sell interstate or international long distance, it has changed its call routing systems so that calls to consumer numbers can be routed via the least expensive carriers. Therefore, there is no technical limitation on portability of 900 numbers.

The FCC had previously maintained that revenue sharing on international calls caused such calls to be defined as pay-per-call. Apparently the FCC has changed its collective minds. In FCC 04-032, AudioText International v AT&T Corp., the FCC stated "Although we by no means endorse the kind of business conduct that AudioText admittedly engaged in here, we have no authority to depart from the well-settled filed tariff doctrine simply because we wish to censure certain business conduct." The business conduct referred to included receiving a share of the revenue paid to the non-US carrier for terminating international calls. Therefore, it would seem that there is an opportunity for the reopening of international information services. It is unlikely that this will occur. Due to the FCC's position on international accounting rates, refile, ISR and VOIP it is unlikely that international information services will be revived. The FCC's position on such issues was driven by the desire to lower consumer charges for international calls. Today, USA carriers terminate their international calls via a variety of technologies and agreements. The USA carriers establish the rates they charge consumers for terminating international calls. Also these same carriers have the flexibility to select the cheapest technology and agreement to terminate such international calls. A comparison of today and 10 years ago basic ILD rates to the 80 least popular international destinations would show that today rates to these

destinations are as high or higher than those of 10 years ago. The only change has been in the amount of money retained by the USA carriers. Also, calls may enter a non-USA destination via several technologies; not all of which pay the non-USA carrier for call termination. Thus there is no known destination where a non-USA carrier can control access to its local non-USA numbers so that it receives enough money per call to share part of the call revenue with an information provider. A more appealing scenario to establish opportunities for international information providers to reach USA consumers is for the FCC to issue regulations that implement the ITU's IPRS.

TDDRA effectively defines how pay per call would be handled via toll free service. Total enforcement in this area is all that is required to protect consumers, carriers and information providers.

The topic of "data services" is very confusing. All of the "data" information services (videotext) discussed by the FCC in this inquiry is offered over traditional call technology just as is audio information services (audiotext). The FCC has clearly determined that data transmission offered via traditional call technology where no "enhancement" of call technology is performed is the same as audio transmission. This applies to facsimile and switched data transmissions. If the FCC chooses to change the definition of enhanced service to include "data services" offered over traditional call technology then facsimile and switched data must also be treated differently than they are today. This would create an impossible situation for all carriers in the USA if they were required to develop a technology that would identify data transmissions over traditional call technology to reroute it in some specified manner.

Also, "modem hijacking" is a confusing term. A modem in a computer dials a specified number to access an internet destination (i.e. an ISP, a cable company, a carrier) based on software loaded by the owner of the computer. A computer owner may choose to load multiple internet access software so that a designated internet destination can be reached at any given time. The computer owner agrees to the terms of the internet destination when she purchases the internet access software. A computer owner can purchase internet access software in several ways. She can buy it already installed in a computer. She can buy it on a CD from a retail outlet using cash, credit card or post-event billing. She can order from a catalog or web site using credit card or post event billing. She can access a web site and download the software after paying via credit card or post event billing. In all of these, the computer owner controls the software purchase after reading the requirements for purchase. In a similar fashion, a computer owner can access a web site, see an offer for software to be downloaded to her computer that will allow her to access that web site via a domestic USA number, an international number, a toll free number or a 900 number. As long as all legal details of the computer owner and internet access provider are in place, there is no difference in this transaction as in the previous transactions. Currently, the customer service organizations within carriers have decided that consumers should not have to pay for calls to information services made via the computer. Just as with 900 service, CSR's have the ability to check network systems to see if the call was actually made from the consumer's number. If the call was actually made on an interstate or international call then the consumer is required to pay for the call according to the terms of the contract the consumer has

with the interstate or international carrier (otherwise they owe based on the filed rate doctrine). As the interstate and international carrier contracts state that a consumer is responsible for all calls made from their telephone number connected to a carrier's interstate or international service for calls made over traditional call technology this includes voice, facsimile, switched data and data information services. According to Federal wiretap regulations, it is against the law to check the content of a call made with traditional call technology unless there is a legal warrant to permit the content to be determined. I believe the FCC or FTC needs to determine how to punish internet access providers who mislead computer owners about the terms and/or cost of their services rather than to define downloaded internet access software as illegal.

In my previous submission, I noted that the UK had chosen a different regulatory direction for pay per call service or premium rate service as it is known in the UK. The UK regulatory agency established an entity to handle PRS complaints. Then it required all entities involved in PRS to contribute to the support of the regulatory entity, ICSTIS. ICSTIS determined that there should be a nationwide campaign to alert all consumers and businesses to PRS number ranges. Then it required all information providers to tape the audio calls made to information services with identifiers that would allow each call to be separately identified. Then if a consum